

August 1, 2000

D.P.U. 95-1A-1/D.P.U. 96-1A-1/D.P.U. 97-1A-1/D.T.E. 98-1A-1

Applications of Boston Edison Company under the provisions of G.L. c. 164, § 94G, for approval by the Department of the actual system performance of the Company's generating units between November 1, 1994 and October 31, 1997.

APPEARANCES: William S. Stowe

Assistant General Counsel

Nstar Services Company

800 Boylston Street

Boston, Massachusetts 02199

FOR: BOSTON EDISON COMPANY

Petitioner

Thomas Reilly, Attorney General

By: George B. Dean

Joseph Rogers

Assistant Attorneys General

Regulated Industries Division

200 Portland Street

Boston, Massachusetts 02114

Intervenor

John Cope-Flanagan

Assistant General Counsel

Nstar Services Company

800 Boylston Street

Boston, Massachusetts 02199

-and-

Eric Krathwohl, Esq.

Rich, May, Bilodeau & Flaherty, P.C.

294 Washington Street

Boston, Massachusetts 02108

FOR: COMMONWEALTH ELECTRIC COMPANY

Intervenor

I. INTRODUCTION

On June 30, 2000, Boston Edison Company ("Boston Edison" or "Company") and the Attorney General of the Commonwealth ("Attorney General") (together, the "Parties") filed for approval by the Department of Telecommunications and Energy ("Department") a Joint Motion for Approval of Settlement Agreement ("Motion") and a Settlement Agreement wherein the Parties have proposed to resolve issues concerning Boston Edison's Generating Unit Performance ("GUP") between November 1, 1994 and February 28, 1998, as well as any performance issues unresolved from filings submitted previously (Settlement Agreement at 1).⁽¹⁾ The Parties indicate that issues not resolved by this Settlement are those relating to generating units from which Boston Edison receives power, but are the subject of other Department investigations, and the issues of NEPOOL reactivation expenses identified in Boston Edison Company, D.T.E. 98-13A (1999) (id. at 2-3).⁽²⁾

II. SETTLEMENT AGREEMENT

The proposed Settlement Agreement is designed to resolve all outstanding issues concerning Boston Edison's GUP between November 1, 1993 and February 28, 1998 (id.

at 1). The Parties propose to reimburse Boston Edison customers \$2.5 million representing the costs to replace power that was lost as a result of system outages (id. at 3). The Parties propose to accomplish the reimbursement by crediting the Company's variable transition charge account as established pursuant to Boston Edison's Restructuring Settlement Agreement approved by the Department in Boston Edison Company, D.T.E. 96-23 (1997) (id.).

The Parties state that approval of the Settlement Agreement is in the public interest (Motion at 2). First, customers would be reimbursed for costs incurred to acquire replacement electricity during system outages (id.). Second, settling these issues concludes the extensive litigation of these matters, contains costs, and reduces the administrative burden on the Department (id.).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest and results in just and reasonable rates. See Western Massachusetts Electric Company,

D.P.U. 94-8C-A/D.P.U. 95-8C-1/D.P.U. 96-8C-1, at 9 (1996); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992).

The Department's authority to review and approve settlements of generating unit performance review issues is derived from its statutory mandate to ensure that investor-owned electric utility companies achieve the lowest possible overall costs to their customers for the procurement and use of fuel and purchased power included in the fuel

charge, consistent with accepted management practices, safety and reliability of electric service, and reasonable regional power exchange requirements. See G.L. c. 164, § 94G(a); see also Boston Edison Company, D.P.U. 88-28/88-48/89-100 at 9 (1989). In assessing the reasonableness of an offer of settlement that purports to settle performance review issues, the Department must scrutinize the settlement agreement in light of the evidentiary record and then weigh the settlement against the probable outcome and resulting rates were the performance review issues to follow the customary course to issuance of final Department Orders. Id. at 9-10. As part of its analysis, the Department must assess whether the financial accommodation reached between the company and other parties to the settlement agreement fairly repairs the harm to ratepayers that the company's actions and decisions may reasonably be said to have caused. Id. at 10.

In order to assess the probable outcome of a performance review proceeding, the Department must apply the appropriate statutes and other precedent to the information available in the record. The Department's statutory authority for undertaking generating unit performance reviews is found in G.L. c. 164, § 94G. For the relevant period, the Department was authorized to set a quarterly fuel charge for a company's recovery of prudently incurred costs for fuel and purchased power. G.L. c. 164, § 94G(b). To aid in determining the prudence of such costs at a later date, the Department is required to annually set performance goals for the generating units that provide electric power to jurisdictional electric companies. G.L. c. 164, § 94G(a).

Also in accordance with G.L. c. 164, § 94G, the Department conducts annual performance review proceedings wherein actual performance data obtained during a company's performance period are reviewed and compared to the goals that had been set for that period in a prior goal-setting proceeding. Should a company fail to achieve one or more of the goals established for a performance period under review, the company must present evidence explaining the variance at the next fuel charge proceeding. G.L. c. 164, § 94G(a). The Department conducts an investigation into the circumstances behind each failure. These investigations typically involve a detailed review of activities surrounding particular generating units in order to determine whether a company, in operating and maintaining its units, followed all reasonable or prudent practices consistent with the statute. Specifically, if the Department finds that the company has been unreasonable or imprudent in such performance, in light of the facts which were known or should reasonably have been known by the company at the time of the actions in question, the company shall deduct from the fuel charge proposed for the next quarter or such other period as it deems proper the amount of those fuel costs determined by the Department to be directly attributable to the unreasonable or imprudent performance. G.L. c. 164, § 94G(a).

IV. ANALYSIS AND FINDINGS

The Department has evaluated the provisions of the proposed Settlement Agreement in light of the information submitted in each GUP proceeding covering the period between November 1, 1993 through October 31, 1997. The Department finds that reimbursing customers \$2.5 million is consistent with Department precedent regarding performance

review settlements, and is a reasonable resolution of the issues presented in the Company's performance review filing. Moreover, the Settlement results in just and reasonable rates, and is within the public interest. Additionally, the Parties' motion to expand the performance period considered in D.T.E. 98-1A-1 to include the period between November 1, 1997 and February 28, 1998, is administratively efficient and therefore, approved.

The Settlement Agreement does not address issues concerning the performance of the Company's nuclear and/or fossil-based units between March 1, 1998 and May 15, 1998. Therefore, in the Company's next transition charge reconciliation filing, the Company is directed to submit generating unit performance data for the fossil-based units, for the period between March 1, 1998 and May 15, 1998 (the date of Boston Edison's divestiture of its fossil generating facilities). See D.T.E. 98-13-A.

The Department notes that the Company's Pilgrim nuclear facility operates pursuant to a performance-based mechanism. See Boston Edison Company, D.P.U./D.T.E. 96-23, at 40. Because the performance of the unit is operating under the performance-based rates mechanism approved in the Company's Restructuring Settlement Agreement, pursuant to G.L. c. 164, § 94G, the Department hereby grants the Company an exemption from the requirements of G.L. c. 164, § 94G(a) with respect to the Pilgrim unit, effective March 1, 1998. See Western Massachusetts Electric Company, D.T.E. 99-54, at 7 (2000).

In accordance with the terms of the Settlement Agreement, our acceptance of the Settlement Agreement does not constitute a determination as to the merits of any allegations, contentions, or arguments made in this investigation. Finally, we note that our acceptance of the Settlement does not set a precedent for the few remaining performance review proceedings or rate filings, whether ultimately settled or adjudicated.

VI. ORDER

After due notice and consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement Agreement, filed on June 30, 2000, by the Attorney General and Boston Edison Company, is granted; and it is

FURTHER ORDERED: That the Joint Motion for Approval of Offer of Settlement Agreement request that the Department expand the scope of Docket D.T.E. 98-1A-1 to include the time period from November 1, 1997 through February 28, 1998 is granted; and it is

FURTHER ORDERED: That the Boston Edison Company shall comply with the directives contained in this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Settlement resolves outstanding issues in Boston Edison Company, D.P.U. 95-1A-1 (1997) (i.e., four outages at New Boston 1, that occurred between May 30, 1993 and July 8, 1993), and all issues in Boston Edison Company, D.P.U. 96-1A-1 (performance years November 1, 1994 through October 31, 1995); Boston Edison Company, D.P.U. 97-1A-1 (performance years November 1, 1995 through October 31, 1996); Boston Edison Company, D.P.U. 98-1A-1 (performance years November 1, 1996 through October 31, 1997). The Parties propose to incorporate the performance period from November 1, 1997 through the commencement of retail access, February 28, 1998, in this Settlement Agreement.

2. In Boston Edison Company, D.T.E. 98-13-A at 6-8, the Company was directed to file a performance review of their fossil-based units for the period between March 1, 1998 and the date of the divestiture of those units.